

No. 18-9369

**In The
Supreme Court of the United States**

WADE TRAVIS WEBB,
Petitioner,

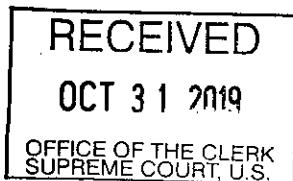
v.

COUNTY OF PIMA, et al.,
Respondents.

**On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit**

PETITION FOR REHEARING

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PARTIES TO THE PROCEEDINGS

Petitioner Wade Travis Webb is the Plaintiff and Appellant.

Respondents County of Pima; Former Sheriff Clarence Dupnik; Former Sheriff Chris Nanos; Sheriff Mark Napier; Detective Jeffrey Castillo; County Attorney Barbara LaWall; Unknown Parties, are the Defendants and Appellees.

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Comes Now Petitioner Wade Travis Webb (“Petitioner”), pursuant to Rule 44 of the Supreme Court of the United States, and presenting his Petition for Rehearing in this matter, states as follows:

JURISDICTION

The Court denied Petitioner’s Petition for Writ of Certiorari on October 7, 2019. Petitioner presents this Petition within 25 days after the Court’s denial of the Petition for Writ of Certiorari. As such, the Court has jurisdiction over this Petition pursuant to Rule 44.1.

INTRODUCTION

Petitioner Wade Travis Webb’s entire life was just written off by the United States of America.

The United States government does not have the authority to write law-abiding, tax paying, productive citizen’s lives off as if a human being is nothing more than a piece of garbage to be thrown out with the trash.

The mindset of the United States government has shifted horribly since the foundation was laid 240 years ago by the founders.

To sum up the Declaration of Independence, the Preamble of the United States Constitution, and the Bill of Rights involves three central components:

1. Unalienable rights or natural rights, or whatever term is preferred, of human beings will be protected in the United States which include life, liberty, the pursuit of happiness among many others. The United States will not negatively interfere with these rights as no country’s laws can override those rights.
2. The United States government will attempt to protect its citizens from foreign threats so that its citizens rights as human beings will not be interfered with.

3. The United States founders did refer to a higher power, also known as God, multiple times calling this higher power the Creator. The United States founders appealed to the Supreme Judge of the World for the rectitude of their intentions. Finally, the United States founders relied on the protection of divine Providence which is a declaration of dependence on the Creator.

Chief Justice Warren Burger defined the relationship between the Declaration of Independence and the United States Constitution rather succinctly stating that "The Declaration of Independence was the promise; the Constitution was the fulfillment." The documents are intertwined as the United States Constitution does not exist without the Declaration of Independence.

ARGUMENT

Petitioner Webb has raised disturbing concerns regarding overreach by the government that *should* be of the utmost importance to the United States as its citizens are being unnecessary harmed by the government. One would think that cases involving abuses of the rights previously mentioned as well as Constitutional rights violations would take precedence above all other matters, but the United States has now proven otherwise with this case as a prime example.

Petitioner Webb has already detailed the facts. To sum it up, Webb was arrested and subsequently indicted on a felony charge in Pima County, Arizona involving multiple people from both the Pima County Sheriff's Department and the Pima County Attorney's Office which was dismissed 84 days after he was arrested and 74 days after he was indicted.

Webb was 38 years old and a noncriminal but was treated like a criminal even though he did not commit a crime and is still being treated like a criminal as he has

been denied Justice for 5.5 years and his life is a living hell. Webb suffered significant emotional damage and financial damage which ruined his life while Pima County was playing around with a United States citizens life. Webb lived in Kentucky and Pima County was aware of that.

An indisputable fact is that the felony “stalking” charge was dismissed but *after* Webb made multiple allegations of Constitutional rights violations, including the due process clause of the 14th Amendment, challenging the Grand Jury hearing by filing a motion to remand to grand jury for redetermination of probable cause. (Appendix A) Pima County did not defend these allegations but instead moved to dismiss in open court two weeks later.

Webb is a flawed human being just like everyone else and he makes mistakes but has maintained his position that there was premeditated malevolent intentions prior to the criminal case and leading up to the Grand Jury hearing. Webb’s defense attorney came to the same conclusion and disclosed this ill intent theory with facts when filing the motion to remand to grand jury for redetermination of probable cause. (see App. A)

Webb did not “stalk” anyone and the evidence shows the stalking in this case could be opposite as well as the crime committed as Webb’s life was in danger. Webb has also maintained that discovery in this case is critical to reveal much more information regarding all parties involved.

A logical inference is that Webb does have “probable cause” that his rights as a human being were violated as well as his Constitutional rights as a United States

citizen as Webb's allegations were not defended but instead Webb suffered all of the damage while Pima County suffered zero damage.

The Defendants in this case walked away as if nothing ever happened. Webb would not knowingly damage someone and walk away. Webb would take responsibility for damaging a human being that did not deserve it. Pima County is not of the same moral fiber as Webb. Pima County is void of morals and ethics even though they claim differently on their websites. Pima County's actions tell the truth as their websites are just words.

Webb was facing a near impossible task to bring the Defendants to justice as he was unfamiliar with law and after the criminal case did not have the resources to hire an attorney, so Webb was forced to go at it alone.

After Webb's encounter, it is deeply concerning that law enforcement and prosecutors can destroy human beings lives at will with no consequences even lacking probable cause that the citizen even committed a crime. In Webb's case, bias and unfairness, among others, were claimed at the Grand Jury hearing and this can happen to anyone.

2,000 years ago, another person's life was written off that did not commit a crime and one would think, especially in the United States, that this would be intolerable. But the United States has learned nothing and continues to make the same mistakes.

There are no statistics on how many cases are dismissed after a challenge of probable cause as in Webb's case. The number should be zero though which would

indicate that law enforcement and prosecutors did their jobs correctly the first time. However, as Webb has already pointed out previously if it was just 1 in 1,000 felony cases per year then that would equate to at least tens of thousands of cases over the years where a citizen was damaged at the hands of the government with no justice as the people in the same socioeconomic class do not have the resources or the time to legally retaliate.

Webb cited a number of cases previously in which the United States *claims* that the Grand Jury system is so important to protect the innocent from unwarranted and malicious persecutions that it serves as an invaluable function in society to stand between the accuser and the accused but cannot be relied upon without a thorough and effective investigation.

One of Webb's case citations which are the words of this Court stated that "The grand jury has always occupied a high place as an instrument of justice in our system of criminal law – so much so that it is enshrined in the Constitution." *United States v. Sells Engineering, Inc.*, 463 U.S. 418, 423 (1983)

Webb expected to get a fair shake in the United States, but the United States has failed to protect its own citizens basic human rights.

Webb, as with many others, was dependable on the United States to allow him to fight for his rights but the United States has made its position clear. The avenues are there but it is matter of the United States allowing its citizens to use those avenues for justice.

FEDERAL GOVERNMENT HELD TO HIGHER STANDARD

The federal government is held to a high standard than its citizens. Citizens cannot arrest anyone, cannot charge anyone with a crime, and cannot attempt to prosecute anyone with the intent of putting that person in prison. It is the federal government's responsibility to protect its citizens rights as the federal government is held to a fiduciary standard.

The original intent was for the government to protect the citizens from the government negatively interfering with their lives. However, over time this has flipflopped and now the government protects itself from its own citizens at the expense of the citizens' rights.

The United States is failing its citizens and needs to reverse course immediately.

ASSESSMENT

Higher Power: You have been on that planet for 44 years now as a citizen of the United States. What is your assessment?

Petitioner: The United States is not doing what it stated it would initially would when the country was formed. They are taking upon themselves to write good people off and they do not care. They have gotten too big for their britches.

Internally they are self-destructing and whether they can repair themselves is in serious doubt. Many people seek some sort of divine intervention, but the truth is the United States has created every single internal problem they have by themselves with no outside influence.

They are running a two-party system that does not work just as they were warned about by their first president in his farewell address.

They have run up a massive debt of almost \$23,000,000,000,000 with no end in sight. They have known Social Security benefits, which are promised to their citizens, would be underfunded for decades but have done nothing. Their infrastructure is collapsing. The American Society of Civil Engineers gives the U.S. infrastructure a D+ in their latest report card and estimates the U.S. would need to spend \$4.5 trillion, which they do not have because they are broke, by 2025 to address the problem. (<https://www.businessinsider.com/asce-gives-us-infrastructure-a-d-2017-3>)

This list goes on and on but the most troubling of all these issues is that the United States government is consciously passing these massive problems on to the children of their nation. The children are innocent, but the United States actions prove that they do not care even though they lie and say they do just like they lie and say they care about human beings most basic of rights.

The United States is on an unsustainable path. They will destroy themselves.

CONCLUSION

For the foregoing reasons, the Court should grant the Petition for Rehearing and grant Certiorari.

Respectfully submitted.



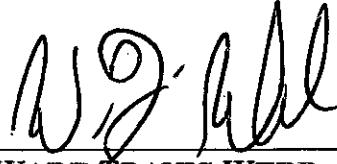
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OCTOBER 28, 2019

CERTIFICATE OF COUNSEL

I, Wade Travis Webb, certify that this Petition for Rehearing to the United States Supreme Court is restricted to the grounds specified in Rule 44(2) of the Supreme Court and that it is presented in good faith and not for purposes of delay.

Respectfully submitted.



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OCTOBER 28, 2019

CERTIFICATE OF COMPLIANCE

This Petition for Rehearing is in compliance with the rules of the Supreme Court of the United States of America as specified by Rule 33.1 and Rule 33.2 with the word count per the latest version of Microsoft Word of 1,776, and it is prepared as directed by Rule 34.

Respectfully submitted.



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OCTOBER 28, 2019

CERTIFICATE OF SERVICE

The Certificate of Service in this case is not applicable as there is no Respondent since Petitioner was denied service of a Complaint on the Defendants by the district court.

Respectfully submitted.



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OCTOBER 28, 2019

APPENDIX

**EXCERPTS FROM MOTION TO REMAND TO GRAND JURY FOR
REDETERMINATION OF PROBABLE CAUSE – Pages 1-4, 8, 11-16**

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8
9 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
10
11

12 IN AND FOR THE COUNTY OF PIMA
13
14

15 THE STATE OF ARIZONA,) Case No.: CR20141298-001
16 Plaintiff,)
17 vs.) DEFENDANT'S MOTION TO REMAND
18 WADE TRAVIS WEBB,) TO GRAND JURY FOR
19) REDETERMINATION OF PROBABLE
20) CAUSE
21)
22)
23)
24) Honorable Javier Chon-Lopez
25) Division 15
26

27 The Defendant, WADE TRAVIS WEBB, through undersigned counsel, respectfully
28 moves this court for an order remanding the case to the Grand Jury to re-determine probable
29 cause. This motion is made pursuant to the Due Process clause of the 14th Amendment to the
30 U.S. Constitution, Art. II § 4 of the Arizona Constitution, A.R.S. § 13-206, Ariz. R. Crim. P.
31 12.9, A.R.S. § ¹³36-2801 *et seq.*, and relevant case law. This Motion is supported by the attached
32 Memorandum of Points and Authorities, the exhibits attached thereto, and the record in this case.

33
34 RESPECTFULLY SUBMITTED this 21st day of May, 2014.
35

36 Lori J. Lefferts
37 Pima County Public Defender
38

39 By
40

41 
42 Sarah L. Mayhew
43 Attorney for Wade Travis Webb

44
45 COPY TO CLIENT

1
2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **I. STATEMENT OF FACTS**

4 In June 2013, the alleged victim, Jill Kappus Shaw, slit her wrists and attempted suicide.

5 **Ex. 1, p. 4.** Ms. Shaw's friend Nicole Bousquet contacted 911, saying that Ms. Shaw asked her
6 call the police. When police arrived Ms. Shaw and her husband were both heavily intoxicated.
7 Ms. Shaw was distraught because a lawsuit she filed, in which she alleged that a coworker had
8 been stalking her, had been dismissed. *Id.* Ms. Shaw's husband, Bradley, told police, "See I can't
9 deal with this shit, I'm about to send my wife away." *Id.*

10
11
12 Defendant Wade Travis Webb has had an on-again, off-again romantic relationship and
13 long-time friendship with Ms. Shaw for over 20 years. On January 9, 2014, Ms. Shaw re-initiated
14 their romantic relationship via telephone and text message. She cried out for Mr. Webb's help,
15 leading him to believe that she was divorcing her husband and suicidal. Mr. Webb did not know
16 about Ms. Shaw's June 2013 suicide attempt. Instead, Ms. Shaw led him to believe that she was
17 divorcing, depressed, and suicidal when she contacted him in January 2014.¹
18
19

20
21 On January 9, 2014, Ms. Shaw called Mr. Webb. **Ex. 2, p. 5 #54.** She called again on
22 January 11, 2014, and she and Mr. Webb spoke for nearly 45 minutes. **Ex. 2, p. 4 #52.** She called
23 on January 15, 2014, and they spoke for almost 16 minutes. **Ex. 2, p. 4 #50.** On January 18, she
24 called again (**Ex. 2, p. 19 #62**); one of their calls on this date was 2 hours long. **Ex. 2, p. 4 #49.**
25
26

27
28
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30
31
32 ¹ Exhibit 2 is the download of the call lists from Mr. Webb's cell phone, disclosed by the State.
Exhibit 3 is a download of the Multimedia Messages (which includes text, hyperlinks, and
photos) from Mr. Webb's cell phone. Exhibit 4 is a download of text messages from Mr. Webb's
cell phone. Two weeks' messages sent from Ms. Shaw to Mr. Webb, between February 14 and
February 28, 2014, were inadvertently sent to Mr. Webb's Spam message filter. These missing
messages are referenced by Mr. Webb and Ms. Shaw in other text messages. See **Ex. 4, pp. 22-28.** The State has not disclosed the missing messages, and the State has indicated that it has been
unable to download messages from the Spam folder or any voicemail and/or audio recordings
from Mr. Webb's cell phone.

1 On January 25, 2014, Ms. Shaw called Mr. Webb nine times in the middle of the night. Ex. 2, p.
2 4 at #40-42; *id.*, p. 19, #53-58. On January 30, Ms. Shaw sent Mr. Webb multiple messages with
3 e-greeting cards attached. Ex. 3, p. 9 #52-54; Ex. 5-7. During these calls and text messages, Ms.
4 Shaw and Mr. Webb rekindled their romance, and Ms. Shaw told Mr. Webb that she was
5 separating from her husband.
6

7
8 On January 31, Ms. Shaw called Mr. Webb, and he missed her call. Ex. 2, p. 18 #43-44.
9 She sent him a picture of her backyard, showing him a picture of a motor home that is parked
10 there. Ex. 3, p. 9 #51; Ex. 8. She called Mr. Webb again, and they spoke for 1 hour and 16
11 minutes. Ex. 2, p. 3, #34. Based on their long and loving conversations and the text message
12 with the photo of the motor home, Ms. Shaw gave Mr. Webb the impression that Ms. Shaw had
13 moved out of her house, was separated from her husband, and was living in the motor home.
14
15 Later that day, she sent Mr. Webb a text message with a picture of herself and her dog, and a
16 note, "I'm sending this awful pic me in return for having to go love you t." Ex. 3, p.8-9 #50; Ex.
17
18 9.²
19

20 On February 1, again in the middle of the night, Ms. Shaw called two more times, and they
21 spoke for approximately 42 minutes. Ex. 2, p. 3 #32-33. On February 6, at 1:02 a.m., Ms. Shaw
22 sent Mr. Webb a text message with four pictures attached. Ex. 3, p. 8 #48; Exs. 10-13. The
23 pictures were of a card Mr. Webb had given to Ms. Shaw in the 1990s, which Ms. Shaw had kept
24 all these years. Exs. 10-13. The photos included Mr. Webb's handwritten note to her, in which
25 he promised, "If you ever need me let me know and I will be there for you." Ex. 11. Immediately
26 after she sent this message, still at 1:02 a.m., Ms. Shaw sent another photo, this time of her dog.
27 Ex. 3, p. 8 #47; Ex. 14. At 1:03 a.m., Ms. Shaw sent Mr. Webb a text message with a photo of
28
29

30 Ex. 3, p. 8 #47; Ex. 14. At 1:03 a.m., Ms. Shaw sent Mr. Webb a text message with a photo of
31
32 ² Mr. Webb goes by the name Travis, and Ms. Shaw sometimes calls him "T" as a nickname.

1 different old love note from Travis. **Ex. 3, p. 8 #46, Ex. 15.** At 1:05 a.m., Ms. Shaw resent the
2 four photos of the first card with the promise, “If you ever need me let me know and I will be
3 there for you.” **Ex. 3, p.7-8 #45.** The next day, on February 7, 2014, Ms. Shaw sent Mr. Webb a
4 text message with a photo of her wrist cut and bleeding. **Ex. 3, p. 7 #44; Ex. 16.** Although the
5 photo was blurry, Ms. Shaw’s wrist tattoo is identifiable. Ms. Shaw accompanied the photo with
6 an explicit cry for help, “M this is not healthy am I just reaching out? I can’t sleep haven’t for
7 days and I like to watch blood drip down my wrists in the unlikely situation that someone might
8 actually help me because I’m clearly not brave enough to accomplish the outcome I crave[.]” *Id.*
9
10 Mr. Webb called her back almost immediately. **Ex. 3, p. 11 #83.**

11
12 On February 9, in the middle of the night, Ms. Shaw called Mr. Webb, and they spoke for
13 49 minutes. **Ex. 2, p. 3 #30.** Afterward, she called him 16 times while he was at work. **Ex. 2, pp.**
14
15 **17-18 # 25-39; id. p. 3, #26-30.** At 2:15 a.m., he sent her a photo of a briefcase that he still owns,
16 which she gave him as a gift years earlier. The accompanying message was intended to reassure
17 her that he was still there for her: “Here’s a picture I was gonna show you but forgot till just
18 now. Do you remember it? And no I still haven’t been to sleep grrrr.” **Ex. 3, pp. 6-7, #40; Ex.**
19
20 **17.** In the evening of February 9, Ms. Shaw’s husband sent Mr. Webb six text messages that say,
21
22 “Stop calling my wife,” “Wtf u got a prob? Call me then,” “Waiting,” “Sto,” “Shrill,” and “Still
23 waiting.” **Ex. 4, p. 8 #111-116.** Mr. Webb did not respond to Bradley Shaw’s angry text
24
25 messages.

26
27 At 1:16 a.m. on Valentine’s Day, Ms. Shaw sent Mr. Webb a text message attaching a
28 photo of a document from the now-dismissed case in which she claimed that a coworker had
29 been stalking her. **Ex. 3, p. 6 #39; Ex. 18.** Ms. Shaw was upset that her Washington lawsuit had
30 been dismissed. **Ex. 1.**

1 he had *stopped talking to her*. "Are you getting these now?" she asked. Ex. 4, p. 23 #292. She
2 told Mr. Webb that he was "freaking me the fuck out" when she thought he was ignoring her.
3
4 Ex. 4, p. 23 #294. Mr. Webb reassured her, "On a positive note at least you know my crazy ass
5 wasn't gonna leave you hanging lmao ☺" Ex. 4, p. 24 #302. When he told her "it's been a rough
6 couple of weeks," Ms. Shaw responded, "For you? I almost called the head police on you"
7 because she believed that he had not contacted her during that time. Ex. 4, p. 24 #304. Mr. Webb
8 told her that he was so worried about her, "I almost hopped on a fucking plane!" Ex. 4, p. 24
9 #306. He let slip that he was concerned enough to speak to her sister, "...I even called your sister
10 to make sure you weren't dead or in a hospital in a coma or some shit because I was so worried
11 about you." Ex. 4, p. 24 #310. They then bantered back and forth, and Ms. Shaw continued to
12 send messages indicating that she was suicidal and that Mr. Webb was important to her: "I told
13 my mom along time ago to tell you if [I] die[.]" Ex. 4, p. 25 #316-317.

17 On March 2, 2014, Ms. Shaw sent Mr. Webb a series of messages that show that she was
18 testing his loyalty and commitment to her. First, she told him, "Things have changed. I thought
19 you were off the bus." Ex. 4, p. 26 #334. Then she wrote, "Well we should talk soon because
20 things have changed. I'm giving this life a go. Had too. Thought you were out[.]" Ex. 4, p. 27
21 #345. Mr. Webb called her bluff and wrote back, "Ok I tried." Ex. 4, p. 28 #346. Ms. Shaw then
22 expresses her displeasure with Mr. Webb's answer, "Wow that was easy." Ex. 4, p. 28 #347. She
23 again made it clear that she was upset that she believed Mr. Webb had not contacted her: "I had
24 no idea you weren't getting my messages..." Ex. 4, p. 28 #350.

25 On March 3, 2014, Ms. Shaw again expressed her fear that Mr. Webb was not serious
26 about being a permanent part of her life, "You are either [in] my life or not what are you?" Ex.
27 4, p. 30 #367. Mr. Webb reassured her, "I'm in your life for now on and you're in mine. Calm
28

1 **B. The State Fails To Instruct The Grand Jury Regarding Stalking**

2 On January 29, 2014, the 247th Grand Jury of Pima County convened. A Deputy Pima
3 County Attorney instructed the Grand Jury on the Arizona law that would be relevant to their
4 deliberations, including the general provisions governing offenses against public order and
5 domestic violence.³ While A.R.S. Title 13, Chapters 29 and 36 were discussed generally, the
6 Deputy County Attorney failed to instruct the Grand Jury at all regarding the elements required
7 to prove stalking under A.R.S. § 13-2923. There is no mention of A.R.S. § 13-2923(A)(2) or (B),
8 the law that Mr. Webb was charged with violating.

9 **C. The State Omits Key Facts In Its Presentation to the Grand Jury**

10 On March 25, 2014, the Pima County Attorney's Office presented Mr. Webb's case to
11 the 247th Grand Jury. **Ex. 20.** Detective Jeff Castillo with the Pima County Sheriff's Department
12 was called to testify. Detective Castillo told the Grand Jury that Mr. Webb had "dated the victim,
13 Jill Shaw, several years prior while they were in high school." Ex. 20 at 4. Detective Castillo told
14 the Grand Jury that "because Jill was married, it appeared that Wade [Mr. Webb] was becoming
15 jealous." *Id.* Without informing the Grand Jury that Ms. Shaw had contacted him, that she had
16 threatened suicide and sent Mr. Webb a photograph of his promise to always be there for her,
17 Detective Castillo read out of context two text messages sent by Mr. Webb on March 5, 2014.
18 Detective Castillo told the Grand Jury that Mr. Webb quit his job, but failed to tell the Grand
19 Jury that Ms. Shaw encouraged him to do so. Detective Castillo told the Grand Jury that Mr.
20 Webb flew to Tucson, but failed to tell the Grand Jury that Mr. Webb had already told Ms. Shaw
21
22

23

24 ³ The Defense has possession of transcripts from the Grand Jury presentations. These transcripts
25 are not attached as exhibits to this Motion because they are hundreds of pages in length, and
26 because there is no single page citation demonstrating that the State failed to instruct the Grand
27 Jury on the relevant statute. The Defense believes the transcripts are on file with the Superior
28 Court, and Defense Counsel will supplement this Motion with transcripts of one or both
29 presentations upon request.

1 that he was worried enough about her when she stopped contacting him between February 14
2 and March 1 that he almost got on a plane to check on her welfare. Detective Castillo did not tell
3 the Grand Jury that Mr. Webb had called 911 to request a welfare check, and Detective Castillo
4 did not tell the Grand Jury that Ms. Shaw was taken by police for a mental health evaluation after
5 a suicide attempt in June 2013.
6
7

8 One juror asked Detective Castillo to explain why Mr. Webb's message to "marie and
9 friends" referred to "us" and "we," and Detective Castillo did not know that Mr. Webb was
10 referring to himself and to Jill.
11

12 Following deliberations, the Grand Jury returned a true bill indicting Mr. Webb on one
13 count of stalking, domestic violence, a class three felony, by a vote of 14 to 2.
14

15 II. LAW AND ARGUMENT

16 The U.S. Supreme Court has described the Grand Jury as "a primary security to the
17 innocent against hasty, malicious and oppressive persecution; it serves the invaluable function in
18 our society of standing between the accuser and the accused...to determine whether a charge is
19 founded upon reason or was dictated by an intimidating power or by malice or ill will." *Wood v.*
20 *Georgia*, 370 U.S. 375, 390 (1962). In Arizona, "[t]he grand jury system is an investigative
21 body acting independently of either prosecutor or judge whose mission is to bring to trial those
22 who may be guilty and clear the innocent." *Marston's, Inc. v. Strand*, 114 Ariz. 260, 264, 560
23 P.2d 778, 782 (1977) (citing *United States v. Dionisio*, 410 U.S. 1, 93 S.Ct. 764, 35 L.Ed.2d 67
24 (1973)). "The duties of fair play and impartiality imposed on those who attend and serve the
25 grand jury are meant to ensure that the determinations made by that body are informed, objective
26 and just." *Crimmins v. Superior Court*, 137 Ariz. 39, 41, 668 P.2d 882, 884 (1983). Thus, "[t]o
27 do its job effectively, the grand jury must receive a fair and impartial presentation of the
28 evidence. *Maretick v. Jarrett*, 204 Ariz. 194, 197, 62 P.3d 120, 123 (2003). Remand of an
29
30
31
32

1 indictment to the Grand Jury is appropriate when the person under investigation is denied a
2 "substantial procedural right," including due process rights, which results in prejudice to the
3 defendant. See Ariz. R. Crim. P. 12.9; *State ex rel. Woods v. Cohen*, 173 Ariz. 497, 502, 844
4 P.2d 1147, 1152 (1992).

5
6 The prosecutor's role during Grand Jury proceedings is not prosecutorial in nature.
7 Rather, it is the duty of the prosecutor, as the legal advisor to the Grand Jury, to instruct the
8 jurors on all statutes relevant to their deliberations to ensure a fair and impartial presentation of
9 the law *and* the evidence to the Grand Jury as required by due process. *State v. Crimmins*, 137
10 Ariz. 39, 42, 668 P.2d 882, 885 (1983). In *Crimmins*, the Court held, "the omission of significant
11 facts, coupled with the omission of instruction on statutes which give the omitted facts their legal
12 significance, rendered the presentation of the case against Crimmins less than fair and impartial."
13
14 *Crimmins*, 137 Ariz. at 43, 668 P.2d at 886 (1983).

15
16 Here, the State failed to instruct the Grand Jury on the requirements of A.R.S. §13-
17 2923(A)(2) and (B), the very statute Mr. Webb is accused of violating. Additionally, the State
18 withheld crucial exculpatory evidence from the Grand Jury – Ms. Shaw's history of suicidal
19 ideation, the fact that she contacted him seeking help, the fact that Ms. Shaw did not fear that Mr.
20 Webb was stalking her but was instead upset when she believed he *stopped talking to her*, the
21 fact that Ms. Shaw encouraged Mr. Webb to quit his job, and the fact that she knew he planned
22 to come to Tucson out of worry for her.

23
24 a. When the State presents misleading evidence to the Grand Jury, it denies a
25 defendant their constitutional right to due process of law.

26
27 The Arizona Supreme Court has refused to delineate a mechanical test to be applied to
28 determine whether the State has complied with due process requirements, because "what is
29 required to make a fair presentation to the Grand Jury will vary from case to case." *State v.*

1 *Coconino County Superior Court (Mauro)*, 139 Ariz. 422, 424, 678 P.2d 1386, 1388 (1984).

2 However, challenges to a finding of probable cause by a Grand Jury due to a deprivation of a
3 substantial procedural right are valid under circumstances in which the presentation of evidence
4 is misleading or otherwise flawed. See *Maretick v. Jarrett*, 204 Ariz. 194, 199, 62 P.3d. 120, 125
5 (2003). Testimony before the Grand Jury does not have to rise to the level of perjury to
6 undermine a finding of probable cause. *Nelson v. Royston*, 137 Ariz. 272, 277, 669 P.2d 1349,
7 1354 (App. 1983). Evidence presented to the Grand Jury that is “intentionally or
8 unintentionally false” cannot serve as the foundation of a probable cause finding. *Id.* (emphasis
9 added). When false or misleading evidence is presented to the Grand Jury, it is “particularly
10 incumbent” upon the prosecutor to correct the record, as a defendant has no effective means of
11 cross examining or rebutting the testimony given before a Grand Jury. *Id.*

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17 b. Due Process also requires that the State present to the Grand Jury evidence which
18 is exculpatory to the defendant.

19 In *Herrell v. Sargeant*, 189 Ariz. 627, 944 P.2d 1241 (1997), the Supreme Court held that
20 the defendant was denied his right to due process and a fair and impartial presentation of the
21 evidence when the county attorney failed to present the Grand Jury with an “accurate picture” of
22 the substantive facts. There, the county attorney was aware that the reason Herrell, armed with a
23 pistol, chased down another vehicle with his own, was because Herrell was attempting to stop
24 what appeared to him to be a kidnapping of his underage daughter. Herrell’s daughter was a
25 runaway who had been the victim of previous sexual assaults, therefore, his belief might have
26 been reasonable under these circumstances. *Herrell*, 189 Ariz. at 631, 944 P.2d at 1245.

27
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30 The Court held that the prosecutor should have introduced testimony of these facts, and
31 should have instructed the Grand Jury on the law pertaining to justification in using force to
32 prevent the commission of a crime. Because this evidence could have deterred the Grand Jury

from finding probable cause, it constituted clearly exculpatory evidence that the prosecutor had a duty to present. *Id.* Without it, the prosecutor created an “inaccurate picture” that denied Herrell his right to due process and a fair and impartial presentation of the evidence. *Id.*⁴

As a corollary to the rulings in *Herrell*, it should be noted that the State is obligated to present exculpatory evidence known to the prosecution to the Grand Jury, even absent a request by the defendant, if that evidence is "clearly exculpatory." *Trebus v. Davis In and For County of Pima*, 189 Ariz. 621, 625, 944 P.2d 1235, 1239 (1997); *citing Mauro*, 139 Ariz. at 425, 678 P.2d at 1389. Clearly exculpatory evidence is evidence of such weight that it might deter the Grand Jury from finding the existence of probable cause. *Id*; *citing U.S. v. Ciambrone*, 601 F.2d 616, 623 (2nd Cir. 1979).

The due process violation that occurred here is strikingly similar to *State v. Crimmins*, 137 Ariz. 39, 668 P.2d 882, (1983). In that case, the defendant was charged with kidnapping and assault when he detained a young man in his truck, on the suspicion that the young man and his friends had robbed the defendant's house earlier that day. *Crimmins*, 137 Ariz. at 39, 668 P.2d at 882. At the Grand Jury proceeding, the State did not instruct the Grand Jury on Arizona's citizen's arrest statutes, despite the fact the defendant in that case called the police after he had detained the suspected robber, and told officers that he believed he had made a citizen's arrest. *Id.* at 42, 688 P.2d at 885. On appeal, the Arizona Supreme Court held that the State's failure to properly instruct the Grand Jury on the law applicable to the charges and possible defenses "rendered the presentation of [the] case less than fair and impartial..." *Id.*

⁴ If Grand Jurors have reasonable ground to believe that other available evidence “will explain away the contemplated charge, they may require the evidence to be produced.” *Maretick*, 62 P.3d at 123; *citing* A.R.S. § 21-412 (2002); *Crimmins*, 137 Ariz. at 44, 668 P.2d at 887 (Feldman, J., specially concurring). However, Grand Jurors generally do not know of the existence of such evidence unless the prosecution tells them about it. Here, the Grand Jurors were explicitly soliciting further explanation for the out-of-context text messages. Ex. 20 at 6-8.

1 Like the defendants in *Crimmins* and *Herrell*, Mr. Webb was deprived of his due process
2 right to a fair and impartial presentation of the evidence when the prosecutor failed to instruct the
3 jury on relevant statute and when the detective failed to provide an "accurate picture" of the
4 substantive facts. Had the State corrected the testimony, the Grand Jury could well have
5 determined that there was convincing evidence of lawful conduct, and returned a no bill. By
6 failing to instruct the Grand Jury on the law pursuant to A.R.S. § 13-2923 and the salient
7 exculpatory facts, the State violated Mr. Webb's due process rights to an unbiased Grand Jury,
8 and a fair and impartial presentation of the evidence.

12 **CONCLUSION**

13 For the foregoing reasons, Mr. Webb respectfully requests that this Court remand this
14 case to the Grand Jury for a new finding of probable cause to support any future indictment the
15 State may seek, in accordance with the U.S. and Arizona Constitutions, A.R.S. § 13-206, Ariz.
16 R. Crim. P. 12.9, A.R.S. §¹³~~26~~-2801 *et seq.*, and relevant case law.

20 RESPECTFULLY SUBMITTED this 21st day of May, 2014.

21 Lori J. Lefferts
22 Pima County Public Defender

23
24
25 By 
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27 Attorney for Wade Travis Webb

28 Copies of the foregoing to:

29 Honorable Javier Chon-Lopez
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DELIVERED

31 Kendrick A Wilson
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